



September 10, 2007

By Fax ((517) 373-5884) and Regular Mail  
The Honorable Andy Meisner  
Chairman, House Commerce Committee o  
N-791 Anderson Building  
PO Box 30014  
Lansing, MI 48909

Re: Interior Designers Licensure Act (HB 4772)  
Amendment to Construction Code Act (HB 4770)

Dear Representative Meisner:

On behalf of the National Kitchen & Bath Association (NKBA), an international trade association representing all facets of the Kitchen & Bath Industry and its over 898 Members in the State of Michigan who employ designers, manufacturers, installers, wholesale distributors and numerous other related trades, please accept this letter expressing our concerns regarding the Interior Designer Licensure Act, HB 4472 and the bill to Amend the Construction Code Act (HB4 770), which, we understand, will be considered by the House Commerce Committee. Most of our comments concern HB 4772, but we will raise a very substantial concern about the language of the proposed amendment to the Construction Code Act towards the end of this letter.

The National Kitchen & Bath Association does not believe there is any compelling need to add to the State of Michigan's regulatory scheme and license interior designers, especially given the impact on the many thousands of employees in Michigan who, under the definition of "interior design" set forth in the proposed bill, would be restricted from practicing their profession by the broad sweep of this law. Michigan would be one of only three states which have practice acts for interior designers (Alabama's practice act was recently declared unconstitutional by the courts), and no state in recent times has seen the need or justification to enact such restrictive, anti-competitive laws.

House Bill 4772 would for the first time limit many thousands of designers in the State from practicing a profession which they have engaged in without complaint for decades. The bill broadly defines interior design services as any service in connection with the design of interior spaces and further defines such services as

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encompassing design documents relative to furniture and furnishings, fixtures, equipment and lighting outlets and switching. Of course, many other specific services are swept up in that broad definition, but the relatively common services of placement and selection of everyday furnishings, artwork, cabinetry, appliances and general layout and design are surely included in the broad reach of the bill. This legislation would have far-reaching ramifications beyond what a simple reading of the proposed legislation would indicate. These are services that have been performed for decades by various designers, decorators, contractors and tradespersons which will now, if this bill were to be passed, be prohibited in commercial settings unless the stringent and burdensome requirements of the act are met.

While the draft bill does purport to create certain exemptions for residential and retail interior design services, our primary objections are centered on two specific issues, each of which is explained in greater detail in the body of this letter:

- HB 4772 does nothing to further the protection of **public health, safety, and welfare**. The citizens of Michigan are appropriately protected in the built environment by the State's architectural and engineering practice acts and existing building codes.
- HB 4472 does nothing to increase **consumer protection** and it could lead to added regulation and increased consumer confusion.

### **Public Health, Safety, and Welfare**

The NKBA firmly believes that the purpose of licensure is to protect the public and that one of state government's top responsibilities is to protect its citizens. Regulation by its very nature limits entry into a profession and should be reserved for professions and occupations that if unregulated pose a serious and demonstrable threat to the public health, safety, and welfare. In other words, to take the serious step of restricting its citizens from engaging in their chosen profession, thereby depriving some people of their livelihoods, a state must determine whether a profession provides services that *directly* and *significantly* affect the public health, safety, and welfare.

In the case of interior design, there is no clear evidence that this important threshold is met. What is the showing of "public health, safety and welfare" that is currently unprotected in the State of Michigan and that is not being adequately addressed by existing state law (e.g., consumer protection statutes, building codes, licensing of contractors, plumbers and electricians, building inspectors and construction code enforcement officials). What documented evidence has

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been offered by the proponents of this legislation to support their claim that the bill is necessary to protect the "public health, safety and welfare"? We submit that none has been presented to the Committee for a very simple reason ... there is none to present. There is no public concern over unregulated interior designs and no absolutely no evidence whatsoever of harm due to the failure to regulate designers. How many consumer complaints have been filed in Michigan because of unregulated interior designers? Virtually every study conducted has concluded that there is no compelling need for interior design legislation and in fact, such laws harm the public by artificially inflating consumer prices, erecting unnecessary barriers to entry into the profession, giving government-imposed advantages to those already practicing and failing to demonstrate any social benefit. In fact, many states have reviewed the concept of interior design licensure and rejected it as unnecessary. For example, over the last several years Washington, Pennsylvania, Maryland and Colorado have reviewed either proposed or existing interior design regulations as part of their sunrise or sunset review process. In each instance, those states recommended against regulating interior design services, citing a lack of evidence that the unregulated practice of interior design posed a direct or significant risk to health, safety, and welfare issues. In fact, as you may know, I attended a round-table discussion of interior design legislation with members of the Michigan Coalition for Interior Design Registration and our members at which the Coalition dropped all pretense of health, safety and welfare and instead focused their arguments on the architects and how they were hindering the ability of interior designers to submit plans for permits in commercial spaces. If true, that is an argument more appropriately taken up by addressing the regulations which the construction code enforcement officials rely upon in accepting building plans for permitting. It should not warrant the regulation of an entire industry to the benefit of a select few (and of course, that wouldn't really rectify the "problem" anyway).

Furthermore, existing Michigan statutes already provide broad exemptions that allow interior designers to provide services in areas that do not have a significant impact on the public's health and safety. I know this because our members who reside in Michigan currently operate under this regulatory structure and have expressed no need or desire to have their services regulated.

### **Consumer Protection**

Proponents of HB 4472 contend that the measure is a needed form of consumer protection. However, this bill adds nothing to the level of protection in the built environment afforded to Michigan citizens.

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There is no indication that poor interior design work is a problem for Michigan consumers. Similarly, there is no evidence that the public desires additional regulation. Michigan consumers already have the means to verify the credentials of interior designers through verification of membership in existing private sector interior design professional associations, such as the National Kitchen & Bath Association, Interior Design Society and American Society of Interior Designers. In fact, the qualification standards for membership in many professional associations, particularly our Certified Kitchen and Certified Bath Designers, are more stringent than the licensing criteria contained in HB 4472.

Michigan citizens also have the provisions of Michigan's consumer protection laws to pursue damages in relation to a violation of deceptive trade practices or other forms of economic harm. It should be recognized that it is not the public, or any consumer advocacy group, or division on consumer affairs that is calling upon the State to regulate unlicensed interior designers. Rather, it is a small group of interior designers themselves who are asking that the State grant a select few a competitive and economic advantage over their competitors. From a regulatory standpoint, this is counter to everything that licensure is supposed to be about and we are concerned with the concept of creating new regulations that are not being championed by or on behalf of the consumer. Further, this regulation could actually have a negative effect on consumers by placing limits on the market and thus limiting competition, which will in turn increase the cost charged to the consumer.

Most recently, in his nationally syndicated column, George F. Will urged lawmakers to refrain from passing interior design licensing bills by decrying the "government-abetted aggression by 'interior designers' against mere 'decorators', or against interior designers whom other interior designers wish to demote to the status of decorators." In his editorial, Mr. Will concluded:

Commercial interests solicit regulations to obtain commercial advantage, as with titling laws. Such laws are instances of rent-seeking.

Beyond the banal economic motive for such laws, they also involve a more bizarre misuse of government. They assuage the status anxieties of particular groups by giving them the prestige, such as it is, that comes from government recognition as a certified profession. But government licenses professions to protect the public and ensure quality. It licenses engineers and doctors because if their testable skills are deficient, bridges collapse and patients die. The skills of interior designers are neither similarly measurable nor comparably disastrous when deficient. Perhaps

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designers could show potential clients a portfolio of their work, and government could trust the potential clients to judge.

George F. Will, *Interior Designers or Decorators?*, The Washington Post, March 22, 2007.

Likewise, the Washington based Institute for Justice, in its exhaustive 2006 study entitled "Designing Cartels: How Industry Insiders Cut Out Competition", examined interior design licensing laws and concluded that this type of law:

artificially inflates consumer prices, erects unnecessary barriers to entry into a profession, gives government-imposed advantages to those already practicing and fails to derive any social benefit ... except for those who seek to create a monopoly.

For these same reasons, Governors in Colorado and Indiana recently vetoed interior design legislation in those states – and those bills were only title acts, not the more restrictive practice act which is being proposed here. As Indiana Governor Daniels noted in his two page veto message:

I can find no compelling public interest that is served by the establishment of new registration requirements for interior designers...nor in the bill's effective "criminalization" of violations of such registration requirements.

A copy of Governor Daniels' veto message is attached to this letter.

There are a number of other issues to be considered in looking at HB 4472. For example, why is there only one, unregulated test that is the be all and end all for demonstrating the minimum competencies of interior designers? The National Kitchen & Bath Association offers the Certified Kitchen Designer and Certified Bath Designer exams which absolutely ensure that our certified designers exceed the minimum competencies for safe and effective design in the two most important (and expensive) rooms in the home...the kitchen and bath. The NKBA has certified 41 members in the State of Michigan to date. The State of California rejected the interior design lobby's attempt to limit certification to one and only one unregulated exam and has recognized the NKBA exams as valid in testing the competencies of interior designers in that state, a state which has more interior designers than any other in the Country. California has also recognized the Council for Qualification of Residential Interior Designers exam, as well as a state specific codes exam, as being sufficient to qualify interior designers and enable them to use the title "Certified Interior Designer". As HB 4472 is now

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drafted, in order to be licensed, an applicant must demonstrate passage of NCIDQ exam. How many designers in the State of Michigan have actually passed the NCIDQ exam and thus would be able to practice interior design under the new law. In Michigan, there are 342 interior designers in the entire state who are NCIDQ certificate holders in good standing. Given the costly and restrictive eligibility requirements to even sit for that exam, how many future interior designers in the State of Michigan will be discouraged from seeking employment in Michigan given their up-hill battle in competing with those select few licensed interior designers who are already licensed? To condition licensure on the passage of only one, independent exam over which the State has no input or control, which is extremely costly, restrictive, and which has an extremely low rate of passage would be a disservice to the many interior designers who wish to practice their profession as they have done for so many years in the State and to those future designers who will find themselves unable to work competitively in Michigan. Regarding that pass rate, the most current statistic from NCIDQ is that 49% of those who take the three part exam pass; the 2007 pass rate for the Bar Exam in Michigan was 74%. It is easier to become an attorney in the State of Michigan, a profession which can affect the life, liberty and economic welfare of its clients, than it is to become an interior designer.

The National Kitchen & Bath Association would urge you to seriously consider all the ramifications of such sweeping legislation and its potential impact on the many thousands of employers and employees in Michigan. We estimate that there are at least 80,000 workers who may be impacted by this legislation and who would now be faced with having to defend their right to perform "interior design services". As mentioned above, the NKBA has 898 kitchen and bath professionals as members of our organization. The Interior Design Society lists 316 active interior design members in Michigan, most of whom have never taken the NCQID exam and most likely would be unable to do so under the examination eligibility requirements. Kitchen and Bath Design News reports that there are 2,032 kitchen & bath design firms in Michigan. Our salary survey of NKBA members indicates that each dealership employs an average of 8 employees, so that would mean that kitchen and bath design firms employ some 16,256 workers in the State. Qualified Remodeler Magazine lists 3,461 general remodelers in Michigan, all of whom perform "interior design" services as defined by the bill. Assuming that those firms are the same size as kitchen and bath dealerships (and in fact, they are probably larger), that would mean that an additional 27,688 workers are affected by this bill. Contract Magazine lists 991 interior designers as subscribers. Assuming an average of four employees, that's 3,964 employees. Solid Surface Magazine lists 129 fabricators and Wood & Wood Products Magazine identifies 1,532 cabinet and other woodworking shops.

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Our research shows that they employ an average of 18 employees, so that's an additional 29,898 workers. Home Depot has 43 stores in Michigan, Lowe's has 46 stores in the State and 84 Lumber has 6 locations. Assuming a conservative 10 employees in their kitchen and bath departments, that is an additional 950 workers potentially impacted by this Bill. Chain Store Guide identifies another 189 home center store locations. In addition, the National Home Furnishings Association, the nation's largest organization devoted specifically to the needs and interests of home furnishing retailers, has 82 retail store members in Michigan, all of whom could see some impact from this proposed Bill. Although there is no accurate way to measure the total number of additional stores that sell items which would constitute interior design products or which perform interior design services as defined in the Bill, just considering the home centers and home furnishing retailers identified above, and assuming conservatively that each employs 10 persons who provide what would be deemed "interior design services" under the Bill, that's an additional 2,800 workers in chain and home furnishing stores.

The salaries of those workers have a huge impact on the Michigan economy. Also, factor in the salaries of the support staff working with those designers (installers, bookkeepers, order clerks, etc.). According to America Career Net's estimate of the average earnings of interior design workers in Michigan (\$43,600), that's about \$3.5 billion in earnings per year. Also, consider the dollar value of and taxes generated by the thousands of commercial and residential projects those individuals work on, which is surely in the millions (if not billions) of dollars. This is not the "simple" piece of legislation that the proponents of interior design licensing would lead you to believe.

With reference to HB 4770, we are concerned about the language of Section 10A(2) which purports to authorize a construction code enforcement official to accept interior design documents prepared by an interior designer and sealed by the designer. Of course, nothing in either the code or law prevent a construction code enforcement official from accepting interior design documents from interior designers currently, so the law really adds nothing to the existing practice. It in no way compels a construction code enforcement official to accept the plans if he or she feels, in her professional judgment, that the plans need to be reviewed and signed by an architect or engineer due to the nature of the design. The difficulty that we have with the language as drafted is that it can be construed as prohibiting those who are not licensed as interior designers from submitting design drawings for approval since they do not have a seal and may not be deemed a "qualified interior designer", even if their services are exempt from the licensing requirements of the law. It should not be left to the unlicensed interior

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designer to guess whether the mere submitting of a plan for approval could be deemed a violation of the interior design license act, Section 2819(c), thus subjecting him or her to a possible fine of \$500 and up to 90 days in jail, or both.

While interior designers are deserving of respect for their role in the design process, special legislative consideration is not warranted based on an objective review of the facts. As such, I urge you to reject this unwarranted attempt limit who can practice interior design and reject HB 4472 and HB 4770.

Thank you for the opportunity to express the views of the National Kitchen & Bath Association and considering our concerns about the legislation. We would be more than willing to meet with the members of the Committee or the various design organizations in an effort to develop a regulatory process that truly addresses the needs of the public and the concerns of the design community.

Respectfully,

Edward S. Nagorsky  
General Counsel and Director of Legislative Affairs  
National Kitchen & Bath Association